

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 JASON E. CARR,

Case No. 2:19-cv-01558-GMN-EJY

5 Plaintiff,

6 v.

ORDER

7 PROGRESS RAIL SERVICES, and
8 EASTRIDGE WORKFORCE SOLUTIONS,

9 Defendant.

10 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C.
11 § 1915 to proceed *in forma pauperis*. ECF No. 1. Plaintiff also attached a Complaint to his *in forma*
12 *pauperis* application. ECF No. 1-1.

13 **I. In Forma Pauperis Application**

14 Plaintiff has submitted a short form application showing an inability to prepay fees and costs
15 or give security for them. ECF No. 1. Accordingly, the request to proceed *in forma pauperis* will
16 be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff's Complaint.

17 **II. Screening the Complaint**

18 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint
19 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims
20 and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted
21 or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
22 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state
23 a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112
24 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter,
25 accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556
26 U.S. 662, 678 (2009). The court liberally construes *pro se* complaints and may only dismiss them
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1 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which
2 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,
3 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of material
5 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship*
6 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the
7 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
8 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
9 A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the
10 complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff should be given
11 leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v. United*
12 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Here, Plaintiff attaches a Right to Sue letter issued by the Equal Employment Opportunity
14 Commission (the “EEOC”) dated June 6, 2019. Plaintiff’s Complaint was filed on September 6,
15 2019 and therefore is timely. *Filing a Lawsuit*, <https://eeoc.gov/employees/lawsuit.cfm>. Plaintiff
16 also states that he worked for Eastridge Workforce Solutions of Las Vegas, Nevada, who is
17 “responsible for engaging ... [Plaintiff] with a client that has racial discrimination tendencies.” ECF
18 No. 1-1. Plaintiff explains that he was working for Progress Rail Services through Eastridge
19 Workforce Solutions. Finally, Plaintiff states that while placed at Progress Rail Services through
20 Eastridge a Caucasian male approached him and referred to him using racial slurs or epithets. *Id.*

21 However, to state a prima facie Title VII race discrimination claim, Plaintiff must allege that
22 he was (1) a member of a protected class, (2) performing according to the employer’s legitimate
23 expectations, (3) suffered an adverse employment action, and (4) similarly situated employees
24 outside his protected class were treated more favorably. *Pulliam v. United Airlines, Inc.*, 2012 WL
25 3025087 at *3 (D.Nev. 2012), *aff’d* 585 F. App’x. 408 (9th Cir.2014); *McDonnell Douglas Corp v.*
26 *Green*, 411 U.S. 792, 802 (1973). To state a Title VII hostile work environment claim, Plaintiff
27 must allege that the conduct complained of was so severe or pervasive as to alter the condition of
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1 his employment. *Ariz. ex rel. Horne v. Geo Grp., Inc.*, 816 F.3d 1189, 1206 (9th Cir. 2016) (Title
2 VII claim requires plaintiff to establish conduct that was “sufficiently severe or pervasive to alter
3 the conditions of [his] employment and create an abusive working environment”). Here, Plaintiff
4 fails to allege he suffered an adverse employment action of any kind, that similarly situated
5 employees outside his protected class were treated more favorably than he was, and/or that the use
6 of racially charged language was sufficiently severe or pervasive to alter his working environment.
7 For these reasons, Plaintiff’s Complaint (ECF No. 1-1) will be dismissed without prejudice.

8 If Plaintiff chooses to file an amended complaint, the document must be titled “Amended
9 Complaint.” The amended complaint must contain a short and plain statement describing the facts
10 underlying case conduct that constitutes discrimination and/or harassment. Fed. R. Civ. P. 8(a)(2).
11 Although the Federal Rules of Civil Procedure adopt a flexible pleading standard, Plaintiff still must
12 give the Defendants fair notice of the Plaintiff’s claims against it and Plaintiff’s entitlement to relief.

13 Additionally, Plaintiff is advised that if he files an amended complaint, the original complaint
14 (ECF No. 1-1) no longer serves any function in this case. As such, the amended complaint must be
15 complete in and of itself without reference to prior pleadings or other documents. The Court cannot
16 refer to a prior pleading or other documents to make Plaintiff’s amended complaint complete.

17 IT IS THEREFORE ORDERED that Plaintiff’s Application for Leave to Proceed *In Forma*
18 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this action.
19 Plaintiff is permitted to maintain this action to conclusion without the necessity of prepayment of
20 any additional fees or costs or the giving of a security for fees or costs. This Order granting leave
21 to proceed *in forma pauperis* does not extend to the issuance of subpoenas at government expense.

22 IT IS FURTHER ORDERED that the Complaint (ECF No. 1-1) is DISMISSED without
23 prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If
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1 Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within 30
2 days from the date of this Order. Failure to comply with this Order may result in a recommendation
3 that this action be dismissed.

4 DATED THIS 19th day of September, 2019.

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7 ELAYNA J. YOUCHAK
8 UNITED STATES MAGISTRATE JUDGE
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